BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-14-001

FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF DENVER HEALTH MEDICAL PLAN, INC.

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Denver Health Medical Plan, Inc. ("Respondent"), pursuant to §§ 10-1-203, 10-1-204, 10-1-205, and 10-3-1106, as well as § 10-16-416, C.R.S.

The Commissioner has fully considered and reviewed the Verified MCE Report ("Report") dated May 15, 2013, the Respondent's June 13, 2013, written submissions and rebuttals and other relevant work papers, including the recommendations of staff.

The Report covers the examination period of July 1, 2011, through June 30, 2012.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a health maintenance organization (HMO) in the State of Colorado.

2. On May 15, 2013, in accordance with §§ 10-1-203, 10-1-204, 10-1-205, and 10-3-1106, as well as § 10-16-416, C.R.S., the Division completed an MCE of the Respondent. The period of examination was July 1, 2011, through June 30, 2012.

3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2012 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.

4. The MCE was completed on May 15, 2013. Pursuant to § 10-1-205(2), C.R.S., the market conduct examiners prepared the Report, which the Examiner-in-Charge timely

filed with the Division, under oath, on May 15, 2013. The Report was subsequently timely transmitted to Respondent on May 15, 2013.

5. On May 15, 2013, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty (30) days, written submissions or rebuttals with respect to any matter contained in the Report.

6. Pursuant to § 10-1-205(1), C.R.S., the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.

7. On June 13, 2013, Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.

8. The Commissioner has fully considered and reviewed the Report, Respondent's June 13, 2013, submissions and rebuttals to the Report, and other relevant work papers, including the recommendations of staff.

9. The MCE has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 10-1-204, 10-1-205, and 10-3-1106, C.R.S., as well as § 10-16-416, C.R.S.

CONCLUSIONS OF LAW AND ORDER

10. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as filed (hereinafter referred to as the "Adopted Report"). The Commissioner hereby concludes no modifications or corrections to the Report are necessary.

11. The Commissioner finds the Respondent operated in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.

12. The Commissioner considered the options available under § 10-1-205(3)(b) and (c), C.R.S. After such consideration the Commissioner does not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of § 10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to § 10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted or necessary for the resolution of any inconsistencies, discrepancies, or disputed issues.

13. A copy of the Adopted Report is attached to this Final Agency Order and is incorporated herein.

14. Issue A1: Failure, in some instances, to maintain and provide all documentation required for a market conduct examination. This failure constitutes a violation of Colorado Insurance Regulation 1-1-7 during the examination period. No later than thirty-five (35) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its procedures to ensure that it retains all documentation required for market conduct examinations as required by Colorado insurance law.

15. Issue J1: Failure, in some instances, to allow the required time period for submission of needed additional information prior to denial of an unclean claim. (*This is a repeat of issue J3 in the market conduct examination report as of December 31, 2006, signed August 28, 2008.*) This failure constitutes a violation of § 10-16-106.5, C.R.S., during the examination period. No later than thirty-five (35) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its claims processing procedures and practices to ensure that it pends (holds in an open status) unclean claims when it requests additional information and allows at least thirty-five (35) days for the response to be received before denying the claim, as required by Colorado insurance law. In addition, the Company shall provide written evidence that it will consistently send within thirty (30) calendar days, a complete explanation in writing of what additional information is needed to resolve an unclean claim to the provider, policyholder, insured, or patient, as appropriate.

    In the market conduct examination for the period of January 1, 2006, through December 31, 2006, Denver Health was cited for failure to allow the required time period for submission of required information prior to denial of a claim. The violation resulted in Item #11 of Final Agency Order O-09-004. The Commissioner directed the Company to revise its procedures "to ensure that any information required to resolve a claim is requested within thirty (30) calendar days after receipt of the claim, and the person from whom the information is requested is given thirty (30) calendar days to provide the information as required by Colorado insurance law". Having been previously ordered to revise its procedures in this regard, Respondent knew or should have reasonably known of its present violation of § 10-16-106.5, C.R.S., subjecting Respondent to a higher penalty pursuant to § 10-1-205(3)(d), C.R.S.

16. Issue J2: Failure, in some instances, to correctly determine and assign the received dates of claims. This failure constitutes a violation of § 10-16-106.5, C.R.S., and Colorado Insurance Regulation 4-2-24 during the examination period. The Respondent was required to provide written evidence to the Division that it has revised its claims processing procedures to ensure that all claims, whether received directly by the Company itself or through the Company's clearinghouse, are assigned the correct date of receipt as required by Colorado insurance law. The Division's records indicate that Respondent has corrected its processes and procedures, which if fully implemented,

appear to comply with the corrective actions ordered concerning this portion of the violation.

In addition, in conjunction with Recommendation #5, Denver Health shall conduct a self-audit of all claims received July 1, 2011, through the date of this Final Agency Order to calculate the number of claims for which interest or penalty was owed but not paid or was paid incorrectly. Denver Health shall pay the member or provider any interest or penalty which was owed or incorrectly calculated as a result of its use of incorrect dates of receipt. A report of the self-audit shall be provided to the Division no later than ninety (90) days from the date of this Final Agency Order.

17. Issue J3: Failure, in some instances, to pay, deny or settle claims within the required time periods. This failure constitutes a violation of § 10-16-106.5, C.R.S., during the examination period. The Respondent was required to provide written evidence to the Division that it has revised its claims processing procedures to ensure that all claims are paid, denied or settled within the time periods required by Colorado insurance law. The Division's records indicate that Respondent has corrected its processes and procedures, which if fully implemented, appear to comply with the corrective actions ordered concerning this violation.

18. Issue J4: Failure, in some instances, to pay interest and penalty when owed, in accordance with Colorado insurance law. This failure constitutes a violation of § 10-16-106.5, C.R.S., during the examination period. No later than thirty-five (35) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its claims processing procedures regarding payment of interest and penalty for late payment of claims as set forth in Colorado insurance law.

    In addition, in conjunction with Recommendation #3, Denver Health shall conduct a self-audit of all claims received July 1, 2011, through the date of this Final Agency Order or until the claims processing system has been corrected, whichever is later, to determine the number of claims for which interest or penalty was owed but not paid or paid incorrectly. Denver Health shall pay the member or provider any interest or penalty which was owed but not paid. A report of the self-audit shall be provided to the Division no later than ninety (90) days from the date this Final Agency Order unless an extension is granted based upon the date the processing system has been corrected.

19. Issue K1: Failure, in some instances, to make timely notification to covered persons of first level utilization review appeal determinations. This failure constitutes a violation of Colorado Insurance Regulation 4-2-17 during the examination period. The Respondent was required to provide written evidence to the Division that it has revised its utilization review procedures to ensure that all first level appeal decisions are communicated within the time period required by Colorado insurance law. The Division's records indicate that Respondent has corrected its processes and procedures,

which if fully implemented, appear to comply with the corrective actions ordered concerning this violation.

20. Issue K2: Failure to provide the name, title and qualifying credentials of the reviewer or clinical peer in first level utilization review determination notifications to covered persons. This failure constitutes a violation of Colorado Insurance Regulation 4-2-17 during the examination period. The Respondent was required to provide written evidence to the Division that it has revised its utilization review appeal procedures to ensure that its first level utilization review appeal determination notifications contain all information required by Colorado insurance law. The Division's records indicate that Respondent has corrected its processes and procedures, which if fully implemented, appear to comply with the corrective actions ordered concerning this violation.

21. Issue K3: Failure, in some instances, to provide a reference to the evidence or documentation used as the basis for an adverse first level utilization review determination in its notification to covered persons. This failure constitutes a violation of Colorado Insurance Regulation 4-2-17 during the examination period. The Respondent was required to provide written evidence to the Division that it has revised its UR appeal procedures to ensure that its first level UR appeal determination notifications contain all information required by Colorado insurance law. The Division's records indicate that Respondent has corrected its processes and procedures, which if fully implemented, appear to comply with the corrective actions ordered concerning this violation.

22. Issue K4: Failure, in some instances, to inform covered persons of their right to request and receive relevant information upon issuance of an adverse first level utilization review determination. This failure constitutes a violation of Colorado Insurance Regulation 4-2-17 during the examination period. The Respondent was required to provide written evidence to the Division that it has revised its utilization appeal procedures to ensure that its first level utilization review appeal determination notifications contain all information required by Colorado insurance law. The Division's records indicate that Respondent has corrected its processes and procedures, which if fully implemented, appear to comply with the corrective actions ordered concerning this violation.

23. The issues and violations described in paragraphs 14 through 22 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Commissioner hereby orders a civil penalty in the amount of **one hundred one thousand and no/100 dollars ($101,000.00)** for the cited violations of Colorado law. However, the Commissioner hereby stays **$27,000.00 of the $101,000.00** civil penalty based upon documentation of corrective actions initiated by the Respondent prior to issuance of this Final Agency Order, which appear to correct the cited violations of Colorado law. The stayed portion of the civil penalty shall become due and payable if the Division subsequently determines that the Respondent is not in substantial compliance with all corrective

actions included in this Final Agency Order. The remaining **$74,000** penalty shall be assessed a surcharge of 10% of the penalty amount pursuant to 24-34-108, C.R.S. Thus, the surcharge assessed is **$7,400.00**. The total balance due, including the surcharge, is **eighty-one thousand four hundred dollars ($81,400.00)**. The surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program. The penalty and surcharge shall be due to the Division no later than thirty-five (35) days from the date of this Final Agency Order.

24. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and this Final Agency Order, dated July 2, 2013.

25. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law. Copies of the adopted report and this Final Agency Order will be made available to the public no earlier than thirty-five (35) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.

26. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the District Court in and for the City and County of Denver and shall be governed by the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.

27. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules.

WHEREFORE: It is hereby ordered that the findings of facts and conclusions of law contained in the Report dated May 15, 2013, subsequently adopted by the Commissioner on July 2, 2013, are hereby filed and made an official record of this office, and the within Final Agency Order incorporating the Adopted Report is hereby approved and effective this 2nd day of July, 2013

Jim Riesberg

Jim Riesberg
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of July, 2013, I caused to be deposited the **FINAL AGENCY ORDER NO. O-14-001 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF DENVER HEALTH MEDICAL PLANS, INC.,** in the United States Mail via certified mailing with postage affixed and addressed to:

LeAnn Donovan
Executive Director of Managed Care/CEO
Denver Health Medical Plan, Inc.
777 Bannock Street, MC6000
Denver, Colorado 80204

Eleanor Coe

Eleanor Coe
Market Regulation Administrator
Division of Insurance